

ORDER SHEET  
**IN THE HIGH COURT OF SINDH,**  
CIRCUIT COURT HYDERABAD

Cr. Bail Application No. S- 1435 of 2020

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<b>DATED</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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For orders on office objection.  
For hearing of main case.

10.02.2020

Applicants Qabil Khan Jatoi & Gul Hassan are present on interim bail.

Mr. Mushtaque Hussain, Advocate for applicants.

Mr. Kaleemullah Memon, Advocate alongwith complainant.

Ms. Rameshan Oad, Asst. Prosecutor General.

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**ABDUL MAALIK GADDI, J-** Through this bail application, applicants Qabil Khan Jatoi & Gul Hassan seek pre-arrest bail in a case filed by the complainant Muhammad Yaqoob under Section 3 & 4 of Sindh Child Marriage Restraint Act, 2013.

2. The allegation against the applicants is that on 29.06.2018 at about 10:00 to 11:00 A.M they duly armed with deadly weapons entered into the house of complainant and on the force of weapons took away minor baby Shama and then accused Qabil with the help of co-accused Gul Hassan got Nikah with the said minor baby Shama.

3. It is contended by learned counsel for the applicants that the case against the applicants is false and has been registered with malafide intention ulterior motives; that there is question of violation of age of alleged baby girl Shama; that the alleged offence does not fall within the ambit of prohibitory clause of Section 497 Cr.P.C and the applicants are no more required for investigation. During the course of arguments, he has drawn the attention of this Court towards an order dated 01.02.2019 passed by this Court in Cr. Misc. Application No. S-36 of 2019 wherein the alleged Mst. Shama had appeared and denied all the allegations levelled by the complainant and submitted that she being wife of the applicant Qabil Khan Jatoi residing with her happily under valid Nikahnama; that the applicants are innocent and have nothing to do with the alleged offence and have been falsely implicated in this case by the complainant therefore, he prays for confirmation of interim bail.

4. On the other hand, learned counsel for the complainant contended that applicants have kidnapped the daughter of complainant and then applicant No.1 Qabil Khan Jatoi forcibly got married with her and false Nikahnama has been prepared by him and at the time of alleged marriage, baby Shama was not major; that there is question of violation of age of alleged baby Shama; that no doubt the alleged baby Shama was produced before this Court however, in the said forum her age was not determined. He lastly prayed for dismissal of bail application.

5. Learned A.P.G has recorded her no objection on the ground that if the learned trial Court is directed to conclude the trial within a period of two (02) months from receipt of this Order.

6. I have heard the arguments advanced by learned counsel for the parties and perused the material available on record. It is noted that accused Qabil Khan Jatoi has got married with Mst. Shama under valid Nikahnama dated 30.06.2018. It appears that in the said Nikahnama the age of Mst. Shama has been shown as 18 years. The only allegation against the applicants is that they have kidnapped Mst. Shama and then applicant No.1 Qabil Khan Jatoi forcibly got married with her. It is also noted that a Cr. Misc. Application being No.S-36 of 2019 has been filed by the complainant before this Court wherein the said Mst. Shama has been appeared and denying the case and claim of the complainant.

7. It is stated by learned counsel for the applicants that Mst. Shama is residing with applicant Qabil Khan as her wife under valid Nikahnama. It also appears from the record that case before the trial Court is at initial stage and the punishment of the offence under which the applicants have been booked does not fall within the ambit of prohibitory clause of Section 497 Cr.P.C. However, it is yet to be determined at the time of trial whether the applicant No.1 Qabil Khan Jatoi had married with Mst. Shama in violation of Sindh Child Marriage Restrain Act, 2013 or otherwise. In such circumstances, the case against the applicants requires further probe, as such, the interim pre-arrest bail already granted to the applicants vide order dated 23.12.2019, is hereby confirmed on the same terms and conditions with direction to the trial Court to conclude the trial within a period of two (02) months from receipt of this order. Office is directed to immediately send the copy of this order to the trial Court for

information and compliance. Compliance report shall be submitted through the Additional Registrar of this Court.

8. Needless to mention that the observations made hereinabove are tentative in nature and shall not prejudice the case of either party at the time of.

9. Before parting, I would like to make it clear that if the applicants misuse the concession of bail in any manner, then the trial Court is fully authorised to take every action against the applicants and their surety including cancellation of bail without making any reference to this Court.

**JUDGE**

*\*Fahad Memon\**  
**10.02.2020**